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No. 84-1369

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

MANHATTAN COFFEE COMPANY,
Petitioner,
v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL NO. 688,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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REPLY BRIEF FOR PETITIONER

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April 26, 1985

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TABLE OF AUTHORITIES

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Manhattan Coffee Co. v. International Brotherhood of Teamsters, Local 688, 743 F.2d 621 (8th Cir. 1984) 2

International Brotherhood of Firemen & Oilers, Local No. 935-B v. The Nestle Company, Inc., 630 F.2d 474 (6th Cir. 1980) 2

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Respondent, in its opposing brief herein, has mischaracterized the issue before the Court. First, Respondent argues that arbitrator's opinion and award is proper on the basis of several speculative assertions about the collective bargaining history of the parties. These assertions are not supported by the record and were rejected by both the majority and the dissent of the Eighth Circuit panel that heard the case. Respondent asserts that "It is reasonable to infer" certain conclusions from the

bargaining history and that "it was not unlikely that" the parties took certain actions in the negotiation of the contract. Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit at 7-8. Respondent provides no record citation that the arbitrator drew any such inferences, and provides no other record support for its assertions. Indeed, even the majority of the Eighth Circuit panel which affirmed the arbitrator's opinion and award firmly rejected the proposition that the "bargaining and negotiation history" supported the arbitrator's decision. *Manhattan Coffee Co. v. International Brotherhood of Teamsters, Local 688*, 743 F.2d 621, 624, 625 (8th Cir. 1984).

Second, Respondent has substantially mischaracterized the Sixth Circuit's decision in *International Brotherhood of Firemen and Oilers, Local 935-B v. The Nestle Company, Inc.*, 630 F.2d 474 (6th Cir. 1980). Having successfully argued the *Nestle* case before the Sixth Circuit, we take issue with Respondent's attempt to distinguish *Nestle* from the majority opinion of the Eighth Circuit in the instant case. In *Nestle*, the arbitrator's award was vacated because the arbitrator effectively excised the mandatory application of the insubordination clause from the collective bargaining agreement. Here, in parallel fashion, the arbitrator—without any justifiable reliance on bargaining history or any record support—excised the "sound business considerations" proviso from the parties' collective bargaining contract.

CONCLUSION

For the foregoing reasons and those stated in the petition herein, petitioner respectfully submits that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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